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Ann V. Butterworth, Esq.
Assistant to the Comptroller for Public Finance
State of Tennessee
Comptroller of the Treasury
1600 James K. Polk Building
505 Deaderick Street
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RE: Proposed New Guidelines for Interest Rate and Forward Purchase Agreements

Dear Ann:

We appreciate this opportunity to submit comments on the revised draft of proposed changes to the Guidelines for Interest Rate and Forward Purchase Agreements (the "Guidelines"). While we believe the revised proposed Guidelines are more accommodating than the initial version, we note that the procedures are still very arduous and time consuming, which makes it unlikely that local governments in Tennessee (including sophisticated issuers) would be willing to enter into Swap transactions in the future, including transactions such as interest rate lock agreements that, by definition, are covered by the proposed Guidelines. Set forth below are our comments with respect to the revised proposed Guidelines.

General Observations

1. Conflicts. Throughout the proposed Guidelines there are restrictions against conflicts on the part of the professionals that advise Tennessee local governments. While it is clear that the guidelines prohibit professionals that are advising Tennessee local governments on a particular Swap transactions from representing other parties to that transaction, it is not clear whether the prohibition extends to representing other parties on prior and/or future unrelated swap transactions where the Tennessee local government is not a party.

2. Off-Market Swaps. It appears that the body of the proposed guidelines has dropped the prohibition against entering into "off-market" Swaps. However, the Preamble to Guidelines suggests that off-market Swaps are not permitted. We believe there are sound business reasons for an issuer to enter into an "off-market" Swap in certain circumstances. For example, in a refunding scenario the upfront payment received for an "off-market" swap might enable an issuer to finance costs such as redemption premiums, issuance costs and penalties for a termination that may not be financed on a tax-exempt basis. You may wish to clarify.

3. Staffing Requirements. The proposed regulations require that a Governmental Entity have a minimum number of finance staff to include, an accountant, a chief financial officer and a "monitor." Under the Guidelines, it is not clear whether an individual could hold more than one position.

Section Comments

1. Section III.A. PROCEDURE FOR REQUESTING A REPORT OF COMPLIANCE (Form of Request) of the Guidelines provides in the third full paragraph:

> The CEO and the Chief Financial Officer (CFO) shall review all requests prior to submission to the Comptroller. If neither the CEO nor the CFO is a member of the Governing Body, the Governing Body shall appoint one of its members to review the submission.

In many cases, it is likely that neither the CEO nor the CFO will be a member of the Governing Body. This requirement would add an additional layer of review, and we were not certain if this was intentional.

2. Section III. G. (Reporting). The Guidelines provide a list of information to be filed "both with the Governing Body and with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) system, or as indicated." In this regard, some of the listed information (e.g., annual budget, debt and derivative management reports, etc.) is not typically filed with EMMA. Has EMMA been contacted to determine whether and how they would process and accept this information? Additionally, under current SEC Regulations, it is not necessary to make filings with EMMA with respect to certain variable rate obligations. We believe the requirements of proposed Section III. G. would override this exemption from continuing disclosure. Also, it is not clear whether all of the items listed under Section III. G. are intended to be filed with EMMA.

3. Section IV.F.1 (Standards for Counterparty Selection and Security for Financial Interest. – Credit Criteria). This Section imposes rather demanding rating standards on the Swap providers. While the revised proposed Guidelines are more liberal than the initial draft, we note that few Swap providers will be able to meet the proposed requirements in the current credit market. Additionally, Tennessee local governments that enter into bank loans can effectively circumvent this restriction, as many bank loans are tied to Swaps with similar termination fees.

Minor Editorial Comments

In addition to the foregoing, we had a few minor editorial comments:

The definition of "Swap Counsel" appears to be missing the word "which" in the sentence that

reads, "In the case of a conduit financing, the conduit issuer's staff, consultants and contractors (including Swap Counsel) shall not serve as counsel to the borrower **[which]** is borrowing from or through the conduit issuer."

Paragraph 1 under IV GUIDELINES SPECIFIC TO INTEREST RATE AGREEMENTS – A. Requesting a Report of Compliance for an Interest Rate Agreement appears to be missing a word, "1. Outstanding **[debt, indebtedness, swap?]** with a principal amount of at least $50,000,000 at the time of execution of the initial Interest Rate Agreement."

Paragraph 3 of Section IV.F.1 (Standards for Counterparty Selection and Security for Financial Interest. – Credit Criteria) appears to missing a T.C.A. Section reference, "All collateral must be in a form compliant with Tenn. Code Ann. Section **[?]** or eligible investments for Governmental Entities in the Tennessee.

We think APPENDIX B should be entitled, "FORWARD PURCHASE INFORMATION SHEET."

We hope these comments are helpful, and we are available to discuss these further with you or the members of your team as you deem advisable.

Sincerely yours,

Richard J. Miller

cc: James F. Huntzicker
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